[ORIGINAL CIVIL JURISDICTION]
WHITLEY, Ag. C.J.
November 24, 1937.

RE N. K. PONNAMPALAM.

[SELANGOR BANKRUPTCY No. 188 of 1937]

Co-operative Societies Enactment (Cap. 97), S. 20—meaning of "debt."

The expression "any debt due" in section 20 of the Co-operative Societies Enactment (Cap. 97) means any debt presently due and payable and does not include a contingent liability.

Flint v. *Barnard*, 22 Q.B.D. 90; *Wilmot* v. *Alton*, (1896) 2 Q.B. 254; *In re European Life Assurance Society*, 39 L.J. Ch. 324; *In re Stockton Malleable Iron Company*, 2 Ch. D. 101 applied.

MOTION.

Cobden-Ramsay, Official Assignee (applicant) in person.

Mr. Navaratnam, Chairman of The Selangor Government Servants Thrift and Loan Co-operative Society was present on behalf of the Society (Respondent).

Cur. Ad. Vult

WHITELY, AG. C.J.—This was a Motion by the Official Assignee F.M.S , asking for directions as to whether the Selangor Government Servants' Co-operative Thrift & Loan Society Limited (which I shall refer to as the Society) is entitled to retain the sum of $36 due from the Society to N. K. Ponnampalam (whom I shall refer to as the debtor) against whom a Wage Earner's Administration Order has been made.

The debtor was a member of the Society, and has $36 standing to his credit in their books. He is a surety for one M. Arumugam for a loan of $816 obtained by the latter from the Society. Arumugam has been regularly repaying the loan, and had committed no default in respect thereof up to the 12th September 1937, on which date the Wage Earner's Administration Order was made against the debtor.

On the 1st September 1937, after issue of certificate, the Official Assignee wrote to the Society requesting payment to him of the debtor's credit balance, as soon as the Supreme Court should have made the confirmatory order. At the same time he forwarded a signed consent letter from the debtor. The Honorary Secretary of the Society replied to the effect that the balance would not be handed over until the debtor was released from his liability as a surety.

Section 20 of the Co-operative Societies Enactment (Cap. 97) reads as follows:—

> "A registered society shall have a lien upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt."

By-law 28 of the Society provides that membership of the Society ceases by, *inter alia*, bankruptcy.

The Official Assignee contends that the right of lien under section 20 is only in respect of a debt due from a member to the Society, and that the debtor by reason of his bankruptcy is no longer a member. Further, he contends that as the debtor is only a surety for a borrower who has not yet defaulted, there is no 'debt due' by the debtor, and that there is only a liability contingent on the event of the borrower defaulting.

The Society was not represented by counsel, but their Chairman Mr. Navaratnam attended, and I adjourned the case in order that he might put the Society's submissions in writing. I am indebted to him for the full and clear statement which he produced. He admits that from the Society's point of view the making of a Wage Earner's Administration Order is the equivalent of bankruptcy.

The Society submits that there is no limitation of time in section 20, and that accordingly 'debt due' should be taken to mean 'debt due or which may become due.' It points out that a dividend in respect of the financial year ending 31st December 1936 may be declared in March 1937, and that all members who resigned between the 1st January 1937 and the date of declaration of the dividend would be entitled to the dividend by virtue of the provisions of by-law 84. Conversely it is argued, a past member should remain liable for any debts which may in the future become due from him and, until the borrower in the present case has paid off his loan in full, the possibility remains that the debtor may become liable to the Society as surety. It is pointed out that if the Official Assignee's contention is correct, the following unfair position might arise. Member 'A' with a credit balance of $100 ceases to be a member on the 1st January while surety for member 'B' to the extent of $200. On the 1st March a dividend is declared as a result of which $50 becomes payable to 'A.' On the 2nd March 'B' defaults, and his surety becomes liable for $50. According to the Official Assignee, the Society would have to hand over to 'A' the $150 due to him, and would not be entitled to deduct the $50 due from him as surety for 'B.' Envisaging some such situation as that, the Society consider that their view as to the meaning of section 20 is the only reasonable one, and resist the Official Assignee's claim. But it does not follow that a certain construction of a statute is a wrong construction merely because in an extreme case it may appear to operate unfairly,

and it seems to me that my answer to the question propounded in this Motion must depend upon the proper construction of section 20.

In construing that section full value must be given to every word, and if upon a strict construction the Society feel that it does not give them all the protection by way of lien, which they consider it was intended to give them, their remedy lies in seeking some amending legislation. As the section now stands, it creates a lien in respect of 'any debt due' from the member. Those words must be taken to mean what they say, and their meaning has been considered in a number of English cases. The phrase occurs in section 18 of the Bankruptcy Act 1883, and has been held to mean all claims to which a debtor is liable, and which are provable in his bankruptcy (*Flint* v. *Barnard*, 22 Q.B.D. 90). That would not cover a contingent liability such as the one under consideration here. Even the words 'debts due or growing due' in section 44 of that Act do not include a claim which is not yet a debt but may become a debt (*per* Russell C. J. in *Wilmot* v. *Alton*, 1896, 2 Q.B. 254). In *Re European Life Assurance Society*, 39, L.J. Ch. 324, James V. C. observed that a debt is due when it is payable, but perhaps the case most in point is *In re Stockton Malleable Iron Company*, 2 Ch. D. 101, where by Article 7 of the Company's articles of association it was provided that the Company should have a first and paramount lien upon all shares of any member for any moneys due to the Company from him alone or jointly with any other person with power to sell and apply the proceeds in or towards the discharge of 'such debts.' In his judgment Jessel M. R. observed that the case appeared very plain. The argument addressed to him on the 7th Article was that 'moneys due' included moneys owing but not at present payable. He held that the word 'due' in the article must mean 'presently payable.' That really disposes of the question raised by this Motion, and it accordingly seems to me that the Official Assignee is right in his contention, and that 'any debts due' means any debts presently due and payable, and cannot go so far as to include a contingent liability, which may in fact never materialise into a debt at all. If it had been intended to include such a liability, it would have been a simple matter to add the words 'and in respect of any contingent liability of such member.' What the Society are, in effect, seeking to do is to read some such words into the section, and that in my opinion cannot be done until such words are added.

It follows then that the Society have no lien upon this sum of $36 in respect of the debtor's liability as surety, and that as against him they are not entitled to retain the money. As the debtor has given his written consent to the money being paid over to the Official Assignee for the benefit of the general body of his creditors, no question arises as to the respective rights of the Official Assignee and the debtor *inter se*. That point was not raised or argued before me, but Mr. Navaratnam in reply to a question by me stated that when a member becomes bankrupt, the Society ordinarily pays over the amount standing to his credit to him and not to the Official Assignee, except with the consent of the debtor. I think that the Society are right in so doing, as section 21 of the Co-operative Societies Enactment specifically creates an exception to the general rule that all the property of a bankrupt vests in the Official Assignee on bankruptcy. That section reads:—

> "Subject to the provisions of section 20 the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by such Member, and the Official Assignee under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest."

I accordingly direct that the Society are not entitled to retain the debtor's credit balance and that, the debtor having consented to its being paid over to the Official Assignee, the latter is entitled to have it paid over to him. I would add that in my opinion the attitude taken up by the Society in this matter has been entirely reasonable, and that they acted properly in not paying the money over until they had obtained the directions of the Court.

Order Accordingly.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J. (S.S.),

WHITLEY, Ag. C.J. (F.M.S.) & CUSSEN, J.

December 10, 1937.

HO KIM HOI.....Appellant.

v.

THE ANGLO-AMERICAN CORPORATION LIMITED.....Respondent.

[SELANGOR CIVIL APPEAL No. 3 of 1937]

Companies—memorandum share—termination of holder's services—cancellation of allotment—illegality of—liability of holder.

The appellant who had subscribed his name to the Memorandum and Articles of the Respondent Company and agreed to take one share value $1,000, was appointed sales director of the Company at a salary of $400 per mensem. The employment, which was for three years, was liable to be determined by a three months' notice on either side. On the 19th of August 1935 the directors of the Company passed a resolution purporting to cancel the appellant's memorandum share. In September 1935